


NO. 48654-7-II

COURT OF APPEALS STATE OF WASHINGTON  
DIVISION II

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DIVISION II  
2016 SEP 19 AM 10:40  
STATE OF WASHINGTON  
BY   
DEPUTY

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MARVIN OLSEN and YONG IM OLSEN, husband and wife, Appellants

v.

H. GARY WALLIS and MONIQUE A. WALLIS, individually and the  
marital community comprised thereof, Respondents.

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REPLY BRIEF OF APPELLANTS

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## ARGUMENT

The arbitrator's award is facially in error. There clearly was no determination of an adverse possession since the "ouster" required was not found until the case was started in 2012. The issues raised by the Counterclaim about the law practice were not part of the case. The arbitrator signed an agreed/stipulated order dismissing those claims. The Defendant lacked any meaningful evidence of expenses for the office building. In an action to decide how to divide jointly owned property the arbitrator made several determinations but none of them in any way supported awarding one of the parties the entire equity in the most valuable of two parcels of land. The arbitrator's award includes the determinations stated in it.

The only "complex" issues were those related to adverse possession. The arbitrator clearly found there was none as evidenced by his specific finding, in the award, of the date of "ouster". While Appellants admit equity is a part of the statutory partition scheme, calling a grossly unfair and unsupportable result, without expressing any even colorable reason for it, and calling that equity, should not be upheld on an appeal.

The Respondents' brief implies the issues surrounding the law practice were a part of the case. Counsel for Respondents, Respondents,

the arbitrator and the Court all know those issues were not a part of the determination of the partition action. There is no mention of any of those issues in the initial award of the arbitrator (CP 53 - 56) or the amended award (CP 58 - 59) because none of those issues were part of the case. Likewise, the arbitrator's awards make no mention of expenses paid (CP 53 - 56 and 58 - 59) by Respondents. The Respondents' record keeping and memory were too poor to itemize anything like the monthly rental value of the property. The arbitrator's award and the Court's confirming of it seem to be based upon a dislike of the Plaintiff/Appellant. This conclusion is inescapable given the determinations stated in the award and amended award of the arbitrator. In Courts of law and in Courts of Equity there must be some articulable reason for a ruling divesting someone of an undivided one-half interest in real property. In this case there is none. Respondents' brief argues the Appellants' brief used multiple pages to show the unfairness. What the Respondents' brief does not do is refute the unfairness or offer any argument for the facial inconsistency between the language of the award and the legal effect of it. The award is arbitrary and capricious on its face and should be remanded for determination. This is clearly an erroneous ruling on its face. *Thorgaard Plumbing & Heating Co., v. County of King*, 71 Wn.2d 126 at 131, 426 P.2d 828 (1967).

A majority of the legal work on this case related to the adverse possession claim. Where Appellants clearly prevailed on that issue the failure to award reasonable fees, at least as related to that issue, is a manifest abuse of discretion. This issue was central to this case. It was researched, briefed, witnesses were secured, evidence was secured and the case was argued. There are no facts in the arbitrator's awards nor argued in Respondent's brief to support a finding an award is not equitable and just. This clearly is a case where fees should have been awarded. RCW 7.28.083(3)

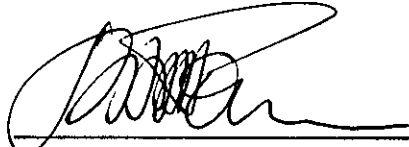
The rent issue as an unliquidated amount is likewise unsupportable. The Defendants/Respondents never contested the amount of the rent. There is no ambiguity regarding the rental amounts. The arbitrator made an award of fees based upon a liquidated number. The rental figures are well below any amount in the real world regarding the office building and are the actual numbers attested to by Defendant/Respondent Wallis regarding the rental house. The refusal to award interest earlier than stated in the award is merely another example of an arbitrary, unsupported, ruling.

### **CONCLUSION**

The arbitrator's awards were arbitrary and capricious. They were totally unfair to Appellants and an unsupportable windfall to Respondents.

They are facially inconsistent and based upon no facts which support the disparate ruling. Plaintiff/Appellant prevailed at trial on the most disputed legal issue, adverse possession, and therefore, under applicable law should have been awarded reasonable legal fees. The pre-judgment interest was based upon an actual amount of rent paid by tenants as reported by the Defendant/Respondent. As a liquidated amount the interest awarded should pre-date the date of the arbitrator's determined date.

Respectfully submitted this 14th day of September, 2016.

A handwritten signature in black ink, appearing to read 'Donald N. Powell', is written over a horizontal line.

Donald N. Powell, WSBA #12055  
Lawyer for Appellants Olsen

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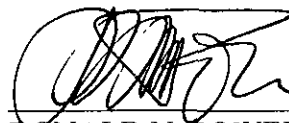
Respondents.

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CERTIFICATE OF SERVICE  
OF APPELLANT'S REPLY BRIEF

I, Donald N. Powell, attorney for petitioners, certify that on the 19<sup>th</sup> day of September, 2016 I caused a true and correct copy of the "Appellant's Reply Brief" to be served on Christopher M. Huss, 4224 Waller Road East, Tacoma, WA 98443. Email: [cmh@tucciandsons.com](mailto:cmh@tucciandsons.com), by email pursuant to our agreement to serve and accept service by email.

DATED this 19th day of September, 2016



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